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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,299	10/09/2001	Mark Gaston Maurits Cappelle	CAPP3001/JEK	5239

23364 7590 09/22/2004

BACON & THOMAS, PLLC  
625 SLATERS LANE  
FOURTH FLOOR  
ALEXANDRIA, VA 22314

EXAMINER
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GLESSNER, BRIAN E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/869,299

Applicant(s)

CAPPELLE, MARK GASTON  
MAURITS

Examiner

Brian E. Glessner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-28,30-33,35-45 and 52-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-28,30-33,35-45,52-63,66 and 67 is/are allowed.
- 6) ☒ Claim(s) 64 and 65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

The following office action is in response to the amendment and RCE filed on July 22, 2004. Claims 1, 3-28, 30-33, 35-45 and 52-67 are pending in the application. Claims 1, 3-28, 30-33, 35-45, 52-63, 66 and 67 are allowed, and claims 64 and 65 are rejected as set forth below.

***Claim Rejections - 35 USC § 102***

Claim 65 is rejected under 35 U.S.C. 102(b) as being anticipated by Gwyther (4,395,858).

In regard to claim 65, Gwyther discloses a covering for a surface comprising a number of successive panels 114 and a fixing means (figures 1 and 2), said fixing means comprising holders 10 including cooperating pairs 12, 38, 40 of fixing parts, said fixing parts arranged to engage and retain the panels in a disconnectable manner over a part of the thickness of the panels, said covering comprising a floor covering, said holders comprising thin, flat strips, and said fixing means comprising multiple pairs of fixing parts 12, 38, 40 protruding from a surface of said strips.

***Claim Rejections - 35 USC § 103***

Claim 64 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gwyther (4,395,858) in view of Pervan (6,516,579).

In regard to claim 64, Gwyther discloses a covering for a surface comprising a number of successive panels 14, 114 and a fixing means 12, said fixing means comprising holders including fixing parts, said fixing parts arranged to engage and retain the panels in a disconnectable manner over a part of the thickness of the panels, said

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holders comprising separate elements fixable on a base 10, wherein each holder cooperates with a respective single panel, a spacer cooperating with said holders, said spacer comprising a profile. Gwyther does not specifically disclose that said holders are made of plastic. Pervan teaches that it is known to make holders for floor panels out of plastic or metal, column 7, lines 10-11. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic for the holders, because plastic is known to be easily moldable and resilient. Also, plastic is inexpensive and is known to have good elastic properties. Finally, the applicant even discloses in his specification that the holders could be made of metal or plastic. Therefore, it appears that both materials would be equivalent for their use in the holder art. Thus, it seems that the use of plastic or metal is not a critical feature of the claimed device, and one having ordinary skill in the art would be capable of determining the most suitable material for a given situation.

### ***Response to Arguments***

Applicant's arguments with respect to claims 64 and 65 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031. The examiner can normally be reached on Monday through Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Brian E. Glessner  
Primary Examiner  
Art Unit 3635

B.G.  
September 18, 2004